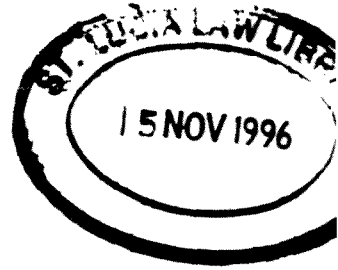


SAINT LUCIA

IN THE HIGH COURT OF JUSTICE
(CIVIL)
A.D. 1996



Suit No. D.49/96

BETWEEN:

KENT GOMEZ

Petitioner

and

MARIE GOMEZ

Respondent

Mr. M. Wilson for Petitioner
Miss B. Downes for Respondent

1996: June 19 and 26

J U D G M E N T

MATTHEW J. (In Chambers).

On December 8, 1993 the Parties were married at the Registry of the High Court of Justice.

In the file before me is a notice of application by the Petitioner to present a petition for dissolution of the marriages before the expiration of 5 years from the date of the marriage. There is no indication that this application has been heard.

On the said June 5, 1996 there was filed a summons for an order of interim injunction. That summons was supported by an affidavit of the Petitioner filed on the same day.

In that affidavit the Petitioner stated that he is employed as an optician and he resides at La Tourney in the Quarter of Vieux Fort.

He stated that while he was out of the island the Respondent carried away the two minor children of the family, namely:

Chance born October 24, 1994; and Mia born January 15, 1996 and had in fact hidden the children away and he could not see them. He

said he had not been able to see the children for 2 months.

He applied to the Court for an order of interim injunction commanding the Respondent to allow the Petitioner access to and the visitation of the said minor children until final determination of matters of ancillary relief.

On the said June 5, 1996 the Court made an EX PARTE order in these terms in part -

"(a) That the Respondent Marie Gomez is hereby ordered to allow to the Petitioner full access and visitation to the children of the marriage namely: reply.

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until further order of the Court.

(b) That the provisional care of the said children until a decree of divorce is made absolute or further order of the Court remains with the Petitioner in accordance with Section 40 of the Divorce Act. No. 2 of 1973.

(c) Returnable date 19th June, 1996."

On June 14, 1996 the Respondent filed an affidavit in reply.

In her affidavit the Respondent stated that she and the Petitioner cohabited at Anse Ger, Micoud until April 13, 1996 when the Petitioner removed most of his belongings from the matrimonial home and left for Miami.

She states that the Petitioner presently resides in St. Thomas, Virgin Islands, and does not reside at La Tourney as he alleged in his affidavit.

She states that throughout the marriage the Petitioner mentally, physically and verbally abused her and this led to a breakdown of

their relationship.

She states that the Petitioner is a drug addict and she is concerned about the possible effects on the health of the children.

She said she has never denied the Petitioner any access to or visitation of the children.

She stated that she was put in fear for her safety and the safety of her children and she sought a protection order from the Magistrate's Court sitting at Micoud.

The Order dated May 24, 1996 was tendered in evidence. It does not appear that service of that Order had been effected on the Petitioner when he applied to the High Court for relief.

She stated that on June 5, 1996 the Petitioner demanded that the Respondent allow him to take Chance to St. Thomas for two weeks and she refused.

She said later that day about 7.00 p.m. the Petitioner accompanied by two policemen came to his home and demanded that the child be allowed to spend the night with him and promising to return him by 9.00 a.m. on Thursday June 6, 1996.

She stated that the Petitioner failed to return the child as agreed and the police are unable to ascertain his whereabouts.

She said that she has learnt that the Petitioner and Chance are in St. Thomas.

The Respondent applies for an order to revoke the order of the High Court made on June 5, 1996.

Having read the order of the learned Judge made on June 5, 1996 I

cannot see any authority there which allows the Petitioner to remove the child Chance or any of the children from the custody of their mother.

The Petitioner has used the order of the High Court in a manner not intended.

The part of the order giving full access and visitation of the children is revoked and the Petitioner is ordered to deliver Chance to the Respondent immediately. Costs in the sum of \$750.00 to be paid by the Petitioner to the Respondent.

A.N.J. MATTHEW
Puisne Judge